

EDDIE L. SANTIAGO
Claimant

CITY OF ARKANSAS CITY
Respondent

EMPLOYERS MUTUAL CASUALTY COMPANY
Insurance Carrier

ORDER

ISSUES

A previous preliminary hearing was held in this matter on January 18, 2000. In a preliminary hearing Order of that date, the Administrative Law Judge also denied claimant's request for workers compensation benefits, finding claimant had failed to establish he served a timely written claim upon the respondent for workers compensation benefits.

¹K.S.A. 44-520a provides that no proceedings for workers compensation benefits shall be maintainable unless a written claim for compensation is served upon the employer or its authorized agent within 200 days after the date of accident, or in cases where compensation payments have been suspended, within 200 days after the date of the last payment of compensation.

On appeal, claimant contends he has established, through his testimony and a form admitted into evidence at the preliminary hearing, that he completed at the respondent's insurance carrier's request on October 24, 1997, that he did make a timely written claim for workers compensation benefits.

In contrast, respondent argues the form the claimant completed at respondent's insurance carrier's request does not satisfy the written claim requirement because that form does not specifically contain words to the effect that claimant is making a claim for workers compensation benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Appeals Board finds the preliminary hearing Order should be reversed.

On September 29, 1997, claimant had been employed by the respondent since 1976 as the chief investigative officer for the Arkansas City Police Department. On that day, claimant injured his low back at work while he was in the process of cleaning a vehicle assigned to him by the police department. Claimant was moving a vacuum cleaner when he felt pain in his low back. At the time he hurt his low back, his immediate supervisor, Capt. Jim Lazelle, was present. Claimant testified he notified Capt. Lazelle that he had pain and discomfort in his back while moving the vacuum cleaner. The pain was in claimant's low back and radiated down both of his legs.

Claimant sought medical treatment for his low-back injury at Ark City Clinic, P.A. on October 24, 1997. He saw his family physician, Robert W. Yoachim, M.D. The physicians at Ark City Clinic also served as the authorized physicians for the City of Arkansas City to treat injured employees.

Before claimant first saw Dr. Yoachim on October 24, 1997, he had voluntarily resigned from the police department on October 2, 1997. His resignation had nothing to do with his work-related low-back injury. He resigned from the police department to join his father in the dry cleaning business.

Dr. Yoachim treated claimant conservatively with pain medication and physical therapy. According to Dr. Yoachim's medical notes, claimant was last seen on March 16, 1998, until claimant returned again on January 14, 2000. Although this is approximately 20 months between visits, claimant testified he remained symptomatic through this entire period of time.

In regard to the timely written claim issue, claimant testified he recalled receiving a Claim for Compensation from the state of Kansas after his September 29, 1997, injury. He completed the claim form and took the claim form to the respondent. But neither the claimant nor the respondent can find the claim form or a copy of the form.

But included in the evidence admitted at the April 25, 2000, preliminary hearing is a copy of a form the claimant received from the respondent's insurance carrier, Employers Mutual Casualty Company (EMC), entitled Employee's Report. This form was completed by claimant and returned to EMC on October 24, 1997. The form was found in EMC's file which also included evidence that EMC had paid all of the bills for claimant's medical treatment for his low-back injury through his visit to Dr. Yoachim on March 16, 1998. The form was sent from EMC's claims department and is identified by a claim number. The claimant completed the requested information that included personal information, a description of the accident, witnesses' names, and the name and address of the treating physician. The claimant testified he was requesting workers compensation benefits at the time he completed the form.

Linda L. Smith, a workers compensation insurance adjuster for EMC, testified by deposition. From the information she received from the respondent and the claimant, she testified she understood the claimant was making a claim for workers compensation benefits. Ms. Smith further testified that was the reason EMC paid the medical treatment expenses that were submitted for the treatment of claimant's low-back injury. Ms. Smith was asked if she would have continued to provide claimant with workers compensation benefits and she replied, "Yes." Additionally, respondent made an inquiry of whether Ms. Smith understood claimant was claiming benefits under the Workers Compensation Act and Ms. Smith also answered, "Yes."

The Appeals Board finds the respondent's insurance carrier is an authorized agent of the respondent for the purpose of receiving an employee's written claim for compensation.² The determining question is whether the employee had compensation in mind and did the employee intend to ask the employer to pay compensation when he prepared or others prepared various documents on his behalf.³ The Appeals Board concludes claimant's testimony, coupled with the EMC's Employee's Report completed by the claimant dated October 24, 1997, and returned to EMC, establishes that claimant served upon the employer a timely written claim for compensation as required by K.S.A. 44-520a.

The other issue in this case is whether the claimant's current need for medical treatment is related to the September 29, 1997, accident and the resulting low-back injury that occurred while employed by the respondent. That issue was not addressed by the Administrative Law Judge. Therefore, absent a stipulation of the parties, the Appeals Board does not have jurisdiction, at this juncture of the proceedings, to review that issue. The Appeals Board does not have original jurisdiction to decide an issue. The Appeals

²See Ours v. Lackey, 213 Kan. 72, Syl. 4, 515 P.2d 1071 (1973).

³See Ours, 213 Kan. at 79.

Board only has jurisdiction to review decisions, findings, orders and awards of administrative law judges.⁴

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Nelsonna Potts Barnes' June 13, 2000, preliminary hearing Order is reversed and remanded to the Administrative Law Judge to address the issue of whether claimant's current need for medical treatment is related to the September 29, 1997, accidental injury.

IT IS SO ORDERED.

Dated this ____ day of August 2000.

BOARD MEMBER

c: Orvel Mason, Arkansas City, KS
Ronald J. Laskowski, Topeka, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director

⁴See K.S.A. 1999 Supp. 44-555c(a).